1926

SUPREME COURT OF THE UNITED STATES.

No. 183.

JACOB U. PAYNE, J. P. HARRISON, AND GEORGE W. HUNTINGTON, COMMERCIAL PARTNERS, UNDER THE NAME AND FIRM OF PAYNE & HARRISON, INTERVENORS, &c., PL'FFS IN ER.,

vs.

JONATHAN J. NILES, JAMES M. NILES, LEANDER H. COREY, AND STEPHEN ALLEN, PARTNERS, DOING BUSINESS UNDER THE NAME AND STYLE OF NILES & CO., PL'FFS, AND WM. A. BROADWELL, SYNDIC OF ANDREW KNOX, DEC'D, DEF'T.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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CIRCUIT COURT OF THE UNITED STATES,
Fifth Circuit and Eastern Dist. of Louisiana.

NILES & Co.
vs.
ANDREW KNOX. } 2424.

Petition. Filed 21st Feb'y, 1855.

To the honorable the circuit court of the United States for the fifth circuit and eastern district of Louisiana:

The petition of Jonathan T. Niles, James M. Niles, Leander H. Corey, and Stephen Allen, all of whom are citizens of the State of Ohio, and are partners, transacting business under the name and style of Niles & Co., respectively shews:

That Andrew Knox, who is a citizen of the State of Louisiana, and who resides in the parish of Plaquemines, in said State of Louisiana, is justly indebted unto your petitioner in the sum of twenty-seven hundred and fifty-one $\frac{69}{100}$ dollars, for this, that on or about the 30th day of May, in the year 1854, your petitioners sold unto the said Knox, machinery suitable for a sugar mill, consisting of boilers, engines, and various other articles more particularly specified in the account hereto annexed for reference as part of his petition, at and for the price of four thousand one hundred and one dollars and sixty-nine cents, which amount is still due and unpaid, with the exception of $1,350 paid by Shaw and Zunts for the said Knox, on the 23d day of January, 1855.

Petitioners further allege that the said machinery so sold by them as aforesaid is still in the possession of the said Knox, and that they have a lien thereon, as vendors, to secure the payment of the balance of the unpaid price of said machinery.

Petitioners further show that they have made amicable demand of payment of the said sum of $2,751\frac{69}{100}$, which the said Knox has hitherto wholly failed to pay.

Wherefore, in consideration of the annexed bond and affidavit, your petitioners pray for a writ of sequestration of the said machinery now in the possession of defendant, Knox, and that the marshal be ordered to take into possession and detain the said machinery until the further order of this court, and that said Andrew Knox be cited to appear and answer this petition; and after due proceedings had, that said petitioners have judgment for their debt aforesaid, with interest from the thirtieth day of May, 1854, and costs, with privilege on the property sequestered, and for such relief in the premises as they are entitled to; and the said plaintiffs do further say that the said machinery so as aforesaid furnished

were "necessary supplies" for the plantation of the said defendant in the parish of Plaquemines, and they are entitled to be paid for the same, by privilege, out of the proceeds of the crop on the said plantation at present in the ground, and they have vendor's lien thereon, which they pray may be allowed; and they therefore pray that they be so paid, and will ever pray, &c.

(Signed) LOGAN HUNTON,
For Plff's.

Account annexed to petition.

Andrew Knox, esq'r, to Niles & Co.

1854, May 30.	For 3-36 boilers 36, 144.53, at 10.....	1,445	30
	" 6 T supply pipes, and 3 blow-off pipes, 10.14, at 6.....	60	84
	" 10 stuff'g box-bolts for supply pipes,, 25.....	2	50
	" 60 joint bolts, 25.....	15	00
	" 1 safety lever stud and valve.....	12	00
	" 3 blow-off cocks, $12.....	36	00
	" 6 guage cocks, 1 50.....	13	50
	" 24 joint bolts for steam pipe 25...	6	00
	" 1 set rough throttle rigging.....	12	00
	" 24 bolts to fasten supply pipes to boilers, 25.....	6	00
	" 35 bolts for valve pipe, 25.....	8	75
	" 30 do for one end of valve cocks, 25.....	7	50
	" 32 do for 30 f't of steam pipe, 25.	8	00
	" 3 susp'g straps and bolts, 76, 20	15	20
	" 2 3-in. valve cocks.....	44	00
	" 2 2-in. do.	32	00
	" 2 ½-in. do. and gas pipe.....	5	50
	" 1 tap for ½-in. cocks.....	1	00
	" 2 3½ P blocks, 35, 6.....	2	10
	" 4 bolts for P blocks, 8, 20.....	1	60
	" 9 pes-cop steam and blow-off pipe 72, 62½.....	45	00
	" 1 corn steam pipe, 3 boilers, 908, 6.....	54	48
	" 1 check valve pipe.....	12	00
	" 1 valve pipe, 100.....6	6	00
	" 1 plate for ends of 2 boilers, 469, "	28	14
	" 2 plates " 1 " 471, "	28	26
	" 1 set begone carrier irons, fan engine, &c.....	1,700	00
	" Extra length of carrier.....	60	00

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1854, May 30.	For 1 C C shaft and drum heads, and shieve, 844.....6	50	88
	" 1 lower shaft and heads, 413..."	24	78
	" 1 shieve, 143....."	8	58
	" 1 spur pinion, 234....."	14	04
	" 2 spur stands, 22,60....."	135	60
	" 3 roder wheels, 21.45....."	128	70
	" 30 f't cast steam pipe, 846....."	50	76
	" 6 back'g flanges for T pipes, 78."	4	68
	" 60 boiler bolts, 25....."	15	00
		$4,101	69

(*Endorsed on account.*)

New Orleans, February 6th, 1855. The within account of boilers and other machinery furnished for my plantation (at per date in account) is correct, except some small deduction for work that did not fit; and as the work is not paid for, I hold it all subject to the order of Niles & Co., and to be delivered to any person on their order alone.

Signed ANDREW KNOX.

Affidavit of J. M. Niles.

STATE OF LOUISIANA,
Parish of Orleans.

J. M. Niles being sworn, states that he is a member of the firm of Niles & Co.; that Andrew Knox is indebted unto Niles & Co. in the sum of two thousand seven hundred and fifty-one and $\frac{69}{100}$ dollars, and that said Niles & Co., to secure the payment thereof, have a lien on these boilers, 1 set of bagasse corner irons, four engine, and other machinery more particularly described in the account hereto anuexed; that said machinery is now in the possession of said Knox; and affiant further states that all the facts set forth in the foregoing petition are true, and affiant verily believes and fears that the said machinery will be disposed of during the pendency of this suit unless a writ of sequestration issue herein.

(Signed) J. M. NILES.

Sworn to and subscribed before me, this 21st February, 1855.

J. W. GURLEY,
Clerk.

F. C. LAVILLE,
Dep. C'k.

Order.

Let a writ of sequestration issue as prayed for in plaintiff's giving bond, conditioned according to law, in the penal sum of fifteen hundred dollars, with J. W. Beerbridge & Co. as sureties thereon.

(Signed) THEO. H. McCALEB,
U. S. Judge.

Writ of sequestration.

The President of the United States of America to the marshal of the eastern district of Louisiana, greeting:

U. S. Circuit Court,
Eastern District of Louisiana.

Niles & Co.
vs.
Andrew Knox. } No. 2424.

You are hereby commanded to sequester according to law the following-described property, constituting the sugar-mill, engine, &c., now in the possession of the defendant, Andrew Knox, on his plantation, in the parish of Plaquemine, viz: 3-36 boilers, 6 T. supply pipes, and 3 blow-off pipes, 10 stuff'g box-bolts for supply pipes, 60 joint-bolts, 1 safety lever, stud and valve, 3 blow-off cocks, 9 guage cocks, 24 joint bolts, for steam-pipe, 1st rough throttle rigging, 24 bolts to fasten supply-pipes to boiler, 35 bolts for valve pipe, 30 bolts for one end of valve-cock, 32 bolts for 30 f't of steam-pipe, 3 susp'g strap, &c., bolts, 2 3-in. valve cocks, 2 2-in. valve cocks, 2 ½-in valve-cocks and gas pipe, 1 tap for ½-in. cock, 2 3½-P. blocks, 4 buts for P. blocks, 9 tes-cap steam and blow-off pipe, 1 cross steam pipe, 3 boilers, 1 check valve-pipe, 1 valve-pipe, 1 plate for ends of 2 boilers, 2 plates for ends of boiler, 1 set bagasse carrier irons, fire engine, &c., extra length of carrier, 1 C. C. shaft and drum-heads and sheive, 1 lower shaft and heads, 1 sheive, 1 spur pinion, 2 spur-stands, 3 roller-wheels, 30 f't, cast steam-pipe, 6 back'g flanges for T. pipes, 6 boiler bolts; and of what you may do in the premises you make due return to our said court, together with this writ.

Witness my hand, and the seal of the said court, at New Orleans, [seal.] this 21st February, 1855.

(Signed) J. W. GURLEY,
Clerk.

Marshal's return.

Received February 21st, 1'55, and on the 21st February, 1855,

I sequestered the within-described property, and took possession of the same, and caused an inventory thereof to be made, which is hereto annexed, marked A, and this writ is returned 22 February, 1855.

(Signed) J. M. KENNEDY,
U. S. M.
By EMILE MARY,
Dep. Marshal.

Inventory, marked A, refered to in marshal's return.

NILES & Co.
vs.
ANDREW KNOX. } No. 2424.

Inventory of articles sequestrated in the above-entitled suit.

35 bolts, for valve pipe.
3 suspending straps and bolts.
3 36 boiler.
6 supply pipe.
3 blow-off pipes.
10 stuff'g box bolts, for supply pipes.
60 joint bolts.
1 saftey valve, stud and lever.
3 blow-off cocks.
8 guage cocks.
24 joint bolts for steam pipe.
1 set throttle rigging.
24 bolts to fasten supply pipes to boiler.
30 bolts for one end of valve cocks.
32 " for 30 feet of steam pipe.
1 check valve pipe.
1 plate for end of two boilers.
1 " " " " one "
1 valve pipe.
Extra length of carrier.
1 set bagare carrier iron fire engine, &c.
1 shaft and drum head.
1 spear pinion.
1 lower shaft and head.
3 flying wheels.
2 spear heads and stands.
6 back flanges for steam pipe.
6 boiler bolts.
30 feet copper steam pipe, 2½ in. diameter.

Citation to Andrew Knox, defd't.

The President of the United States of America, to the marshal of the eastern district of Louisiana, greeting:

NILES & Co.
vs.
ANDREW KNOX. } No. 2424.

You are hereby commanded to summon Andrew Knox, citizen of the State of Louisiana, to comply with the demand of Niles & Co., citizens of the State of Ohio, contained in the petition, of which a copy accompanies this citation, or to deliver his answer to the same, in the office of the clerk of the circuit court of the United States, fifth judicial circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against him by default, which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held; and that you make due return hereof on the first Monday of April, 1855.

Witness the honorable R. B. Taney, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 21st day of Feb'ry, A. D. one thousand eight hundred and fifty-five, and of the independence of the United States of America the 79th year.

(Signed) J. W. GURLEY, *Cl'k.* [SEAL.]

Marshal's return.

Received this 21st day of February, 1855, and on the 21st day of February, 1855, served copies of the within citation, plaintiff's petition and documents annexed, on the within-named Andrew Knox, in the manner following, to wit: by handing the same to his son, H. B. Knox, a free white person above the age of 14, the same H. B. Knox representing his father, who was absent at his plantation situated about 25 miles below the city of New Orleans, in the parish of Plaquemines, and returned on the 22d inst.

(Signed) J. W. KENNEDY,
U. S. M.
PR. COSTANIZE,
Dep. M.

Judg't by default.

Minutes. November term, 1854.

New Orleans, Wednesday, 11th April, A. D. 1855. Court met pursuant to adjournment. Present, the Hon. T. H. McCaleb, district judge; absent, Hon. J. A. Campbell, presiding judge.

Judg't by default.

NILES & Co.
vs.
ANDREW KNOX. } 2424.

On motion of L. Hunton, att'y for plff's, and on showing to the court that process of citation has been duly served on the defendant, and that he has failed to plead an answer to plaintiffs' petition within the legal delay, it ordered that a judgment by default be entered against him.

Judg't against Knox.

CIRCUIT COURT OF THE UNITED STATES,
Fifth Circuit and Eastern District of Louisiana.

New Orleans, Tuesday, 17th April, 1855. Court met pursuant to adjournment. Present, Hon. T. H. McCaleb, district judge; absent, Hon. J. A. Campbell, presiding judge.

NILES & Co.
vs.
ANDREW KNOX. } 2424.

By reason of the default herein entered, and of the law and the evidence, it is now ordered, adjudged, and decreed, that the plaintiffs, Niles & Co., do have and recover judgment against the defendant, Andrew Knox, for the sum of twenty-six hundred and eighty-six dollars and sixty-nine cents, with interest thereon, at the rate of five per cent. per annum, from the 30th day of May, 1854, until paid, and for costs of suit with vendor's privilege upon the sugar mill, boilers, and machinery described in the petition, and also with like privilege on the proceeds of the crop at present in the ground on the plantation of the said defendant.

Judgment rendered 17th April, 1855.

Judgment (signed) 25th April, 1855.

(Signed) THEO. H. McCALEB, [SEAL.]
U. S. Judge.

Petition of intervention of Payne & Harrison. Filed 19th March, 1855.

To the honorable the circuit court of the United States for the 5th circuit and eastern district of Louisiana:

Jacob N. Payne, J. P. Harrison, and George W. Huntington, citizens of Louisiana, and commercial partners, composing the firm

of Payne & Harrison, doing business in the city of New Orleans, respectfully represent, that Andrew Knox, a citizen of Louisiana, is justly indebted to them in the sum of $34,740 13/100, with interest at the rate of 8 p'r cent. p'r annum on $20,000 from the 27th day of July, 1850, and on the sum of $7,795 58/100 from the 15th of April, 1854, and interest at the rate of 5 p'r cent. p'r annum on $3,596 from the 24th of January, 1850, and on $3,348 from the 24th of January, 1851—being moneys advanced by petitioners to said Andrew Knox, as evidenced by the acts hereinafter referred to; that to secure the payment of the said sum of $20,000, the said Andrew Knox did execute a certain authentic notarial act of mortgage, on the 27th day of July, 1850, in favor of petitioners; and to secure the payment of the said $20,000, and of the further sum of $7,344 30/100, and of the further sum of $451 28/100, (and other sums which have since been paid,) together with 8 p'r cent. interest on all said sums of money, as claimed above, the said Andrew Knox, on the 15th of April, 1854, did execute a certain other authentic and notarial act of mortgage in favor of petitioners; and to secure payment of the above-named $3,596 and $3,348, the said Knox, on the 12th of March, 1845, did execute a certain other notarial act of mortgage, to which said mortgage petitioners were subrogated by two authentic notarial acts of subrogation and assignment, executed by William C. C. Claiborne to petitioners, the one bearing date the 24th of January, 1850, and the other the first of April, 1851, duly certified copies of all which said acts of mortgage and subrogation shall be hereafter annexed to this petition.

Petitioners further represent that each and all the said mortgages embraced, besides certain shares therein named, a certain tract of land situate and being in the parish of Plaquemines, cultivated as a sugar plantation, and known by the name of "New Hope Plantation," with all the buildings and improvements, such as the dwelling-house, stables, sugar house, machinery, &c., thereunto belonging and appertaining; and the said acts of mortgage have been duly recorded in the said parish of Plaquemines, as will appear by a certificate of the recorder of mortgages of said parish, to be hereafter annexed to this petition.

Petitioners further represent that certain persons, citizens of New York, and composing the firm of Niles & Co., have brought suit in this honorable court against the said Andrew Knox; have claimed a privilege upon certain buildings and machinery being upon and appertaining to said plantation, and have procured a writ of provisional seizure from this honorable court, by which they now hold said buildings and machinery, in contravention of petitioners' superior right and privilege under the mortgage set forth above.

Petitioners further allege that said Niles & Co.'s contract with said Knox was for a sum exceeding $500, and was never recorded, as required by law, in the parish of Plaquemines, where the said Knox resides, and where said property is situated.

Wherefore petitioners pray to be allowed to file this petition in intervention; that the said Niles & Co. be cited to appear and answer this petition, and that, after due proceedings had, their said writ of provisional seizure may be set aside, or that the petitioners be decreed to have a prior and superior privilege upon the said buildings and machinery, which have been seized as aforesaid, and upon the proceeds of the sale thereof, and for costs, and for general relief.

(Signed) CHILTON & HARRISON,
For Pet'rs.

Petition in intervention. Order.

Order. Let this petition of intervention be allowed. New Orleans, 19th March, 1855.

Signed) THEO. H. McCALEB,
U. S. Judge.

Minutes. November term, A. D. 1855.

New Orleans, Tuesday, 15th January, 1856. Court met pursuant to adjournment. Present, Hon. Theo. H. McCaleb, district judge; absent, Hon. J. A. Campbell, presiding judge.

NILES & Co.
vs.
A. KNOX, PAYNE & HARRISON, intervenors. } 2424.

This cause came on to be heard upon the intervention of Payne & Harrison; and after argument of counsel was submitted to the court, and taken under advisement.

Judgment on intervention. Judg't docket.

CIRCUIT COURT OF THE UNITED STATES,
Fifth Circuit and Eastern District of Louisiana.

November term, A. D. 1855.

New Orleans, Wednesday, 16th January, 1856. Court met pursuant to adjournment. Present, Hon. Theo. H. McCaleb, district judge; absent, Hon. J. A. Campbell, presiding judge.

NILES & Co.
vs.
ANDREW KNOX, PAYNE & HARRISON, intervenors. } 2424.

This cause, upon the intervention of Payne & Harrison, having

been argued and submitted on a former day, and the court having considered the same, doth now order that the said intervention be dismissed with costs.

Judgment rendered 16th January, 1856.
Judgment signed 8th February, 1856.

(Signed) THEO. H. McCALEB,
U. S. Judge.

Rule for new trial.

U. S. CIRCUIT COURT,
For the Fifth Circuit and Eastern District of Louisiana.

NILES & Co.
vs.
ANDREW KNOX. } Intervention of Payne & Harrison.

On motion of Chilton & Harrison, counsel for intervenors in the above-entitled suit, it is ordered that the plaintiffs show cause on the day of January, 1856, why a new trial of the intervention in this case should not be granted, on the ground that the judgment heretofore rendered by the court upon the same is contrary to the law and the evidence.

Opinion and judgment on rule for new trial, by Hon. Theo. H. McCaleb, dis't judge.

U. S. CIRCUIT COURT.

NILES & Co.
vs.
ANDREW KNOX.

The new trial in this case must be refused.

The question of notice cannot be presented as one of essential importance, in the view which the court is required to take of the rights of the parties before it. The case of Pugh vs. Niles & Co. differs materially from the one under consideration. In that case, the plaintiff, Pugh, contended that the injunction to restrain the seizure and sale of the engine should be perpetuated, upon the ground that he was an innocent purchaser of the plantation, having no knowledge of the existence of the lien in favor of the defendants, who had furnished and put up the sugar mill. In this case, the engine was furnished subsequent to the execution of the mortgage. A judgment of this court has already determined the existence of the lien in favor of the plaintiffs upon the mill and engine, and the intervenors, as mortgagees, have no right, by virtue of their prior mortgage upon the plantation and slaves, to say that the lien al-

ready solemnly recognized shall not be enforced. They have no greater rights than the mortgager possessed, so far as this mill and engine are concerned. To permit them to defeat the lien of the plaintiffs under the circumstances of this cause would be manifestly unjust. The mill and engine did not exist upon the plantation when they obtained their mortgage; and although they have, independently of the important additions to the value of the plantation, the same security they originally received from the mortgager, it is yet contended that they are entitled to the proceeds of the mill and engine by right of priority and preference over those who constructed them and put them up, and who have never been paid the price.

The reasoning of the supreme court of this State, in the case of Millandon vs. The Water Company, 11 Martin, 278, is applicable to the case before the court. The plaintiffs have claimed, as vendors of the moveables, which became immoveables by the use to which they were applied, precisely as Millandon did, in the case above cited. It appeared that Millandon had not recorded his contract, but the court held that he still had a lien against the machinery for the unpaid price.

This decision in 11 Martin, was not brought to the attention of the court when the case of Pugh vs. Niles & Co. was under consideration. If it had been, I should perhaps have refrained from the expression of an opinion that the lien there asserted belonged to that class of privileges established by article 3216 of the Louisiana code, in favor of architects, &c. The opinion, however, there expressed, was not essential to the decision of the cause upon the true merits, as they were presented in the argument. There were other grounds upon which the judgment in that case can securely rest. They were grounds which were assumed and discussed at length by counsel, and received the particular attention of the court.

The new trial is refused.

Statement of facts.

NILES & Co. vs. A. KNOX. } Intervention of Payne & Harrison.

UNITED STATES CIRCUIT COURT,
For the 5th Circuit and Eastern District of Louisiana.

We, the undersigned, Hunton & Pike, counsel for plaintiffs, and Chilton & Harrison, counsel for intervenors in the above-entitled suit, do hereby agree upon the following statement of facts, which are admitted, and considered as proved in the above-entitled suit:

1st. All the facts stated in plaintiff's petition, as to the sale and

delivery of the machinery, the price of which is sued for, and for which judgment has been rendered against Knox.

2d. That Payne & Harrison, the intervenors, are mortgage creditors of the defendant, Andrew Knox, as set forth in their petition in intervention, and that the mortgages which evidence the indebtedness of said Knox to said Payne & Harrison were duly recorded in the parish of Plaquemines, (where said Knox resided, and where his plantation was situated,) as set forth more particularly in the memorandum hereto annexed.

3d. That the contract for the sale of the above-mentioned machinery by plaintiffs to defendant was never recorded in the parish of Plaquemines aforesaid.

(Signed) HUNTON & PIKE, for Niles & Co.
" CHILTON & HARRISON.

Memorandum annexed to statements of facts.

Book 4. Mortgage. Andrew Knox to Jas. Erwin, 3rd July, 1839. Book 4th, p. 85 and page 88.

James Erwin, 12 M'ch, 1845, substituting Knox, Andrew Knox to Citizens' B'k, 17 M'ch, 1845, page 274.

Andrew Knox and wife. Mortgage. Feb'ry, 1840, p. 276. Rec'd 19 Feb'y. M'ch, 1845. Cancelled 29th Jan'y, 1855, by act of C. A. Lacoste, of B'k of Miss.

Andrew Knox and Myra Jane to Citizens' Bank, 12 slaves, p 279, M'ch 18th, 1845.

Book A. Andrew Knox to Veillon. Mortgage on Isidore to secure purchase money, Dec'r 18, 1848. Book A, p. 167.

Andrew Knox, fac. of Maunsel, White, Bullett, & Run, $25,354, 27th June, 1850, H. B. Cenas. Recorded 8th July, 1850. On plantation and slaves, 51 slaves, p. 294.

Andrew Knox to Payne & Harrison. Mortgage. 51 slaves and plantation, $20,000, 27 July, 1850. Rec'd 10th Aug't, 1850, p. 304.

Andrew Knox, fac. of Jas. E. Zunts, securing 6 promissory notes $4,225 72 each, by subrogation to mortgage to Maunsel, White & Co., 29th April, 1852, (land and slaves.) Rec'd 22d May, 1852, p. 420.

Book B. Knox to Payne, & H., $8,877,17, excess of advances, April 11th, 1854. Rec'd 24th Ap,l, 1854, p. 119. Andrew Knox to Citizens' B'k of Lou'a, re-inscription of mortgage, 1st March, 1855.

Petition of intervenors for writ of error.

U. S. CIRCUIT COURT,
Eastern District of L'a.

NILES & Co.
vs.
ANDREW KNOX.

On the intervention of Payne & Harrison.

To the hon. the circuit court of the U. S. eastern dist. of La.:

Payne & Harrison, the intervenors in the above suit, respectfully represent that they are aggrieved by the judgment herein rendered against them on the 8th February, 1856, and are advised that there is error therein to their prejudice, and are desirous to take the same to the Supreme Court of the United States, that the proceedings may be revised; wherefore they pray for a writ of error, returnable to the next term of the Supreme Court of the United States, the same to operate as a supersedeas, may be allowed them, on their giving bond conditioned according to law in such sum as the court may direct.

(Signed) PAYNE & HARRISON.
By CHILTON & HARRISON.
Att'ys.

Order allowing writ.

Minutes. November term, 1855.

New Orleans, Tuesday, 19th February, 1856. Court met pursuant to adjournment. Present, Hon. Theo. H. McCaleb, district judge; absent, Hon. J. A. Campbell, presiding judge.

On the intervention of Payne & Harrison.

NILES & Co.
vs.
ANDREW KNOX. } 2424.

On motion of Chilton & Harrison, esqrs., of counsel for intervenors, Payne & Harrison, and on their presenting and filing the petition of said intervenors, representing that they are aggrieved by the judgment herein rendered against them on the 8th February instant, and praying for a writ of error therefrom, returnable to the next term of the Supreme Court of the United States, the same to operate as a supersedeas, it is ordered that a writ of error be allowed as prayed for upon intervenors giving bond conditioned according

to law in the penal sum of forty-two hundred dollars, with good and solvent surety thereon.

Order making Broadwell party.

Minutes. November term, A. D. 1855.

New Orleans, Monday 18th February, 1856. Court met pursuant to adjournment. Present, Hon. Theo. H. McCaleb, district judge; absent, the Hon. J. A. Campbell, presiding judge.

NILES & Co. vs. ANDREW KNOX. } 2424.

On intervention of Payne & Harrison.

On motion of Messrs. Chilton & Harrison, of counsel of intervenors in the above-entitled suit, and upon representing to the court that Andrew Knox, defendant in this suit, has died since the same was instituted, that no one has been qualified as his executor or administrator, and that there is no representative of his estate, except William A. Broadwell, of the city of New Orleans, who is the duly appointed and qualified syndic of said Knox, it is ordered that said Broadwell be made a party to this cause.

Marshal's return. (Endorsed.)

On true copy on file.

Received 18th Feb'ry, 1856, and on the 19th day of February, 1856, I served the within copy on William A. Broadwell, by delivering a copy thereof personally to him in the city of New Orleans.

Returned 20th Feb'y, 1856.

(Signed) H. DUFILHO,
Dep. Marshal.

Bond for writ of error.

Know all men by these presents, that we, Payne & Harrison as principals, and William H. Dameron, of New Orleans, as surety, are held and firmly bound unto Niles & Co., a partnership firm composed of Jonathan J. Niles, James M. Niles, Leander H. Corey, and Stephen Allen, in the full and just sum of forty-two hundred dollars, to be paid to the said Niles & Co., their certain attorneys, executors, administrators, or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with

our seals, and dated this nineteenth day of February, in the year of our Lord one thousand eight hundred and forty-six.

Whereas, lately, at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the eastern district of Louisiana, in the city of New Orleans, in a suit depending in said circuit court, wherein Niles & Co. are plaintiffs, and Andrew Knox defendant, and Payne & Harrison intervenors and plaintiffs, both as against said Niles & Co. and said Knox, judgment was rendered against the said intervenors, plaintiffs; and the said Payne & Harrison, intervenors, having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit; and a citation directed to the said Niles & Co. and W. A. Broadwell, syndic of Andrew Knox, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next: Now the condition of the above obligation is such, that if the said Payne & Harrison, intervenors, shall prosecute their writ to effect, and pay such judgment as may be rendered against them, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) PAYNE & HARRISON, [SEAL.]
" WM. H. DAMERON, [SEAL.]

Sealed and delivered in presence of—
R. P. HARRISON.

UNITED STATES OF AMERICA,
Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE:

I, John W. Gurley, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 21 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had in the case of Niles & Co. vs. Andrew Knox, Payne & Harrison, intervenors, No. 2424 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New [SEAL.] Orleans, this 4th day of September, A. D. 1856.

J. W. GURLEY,
Clerk.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the eastern district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or one of you, between Jonathan J. Niles, James M. Niles, Leander H. Corey, and Stephen Allen, partners, transacting business under the name and style of Niles & Co., plaintiffs, and William A. Broadwell, syndic of Andrew Knox, deceased, defendant, and Jacob U. Payne, J. P. Harrison, and George W. Huntington, commercial partners, doing business under the firm name of Payne & Harrison, intervenors in the above suit, and plaintiffs, both as against the said Niles & Co. and the said William A. Broadwell, syndic of Andrew Knox, deceased, a manifest error hath happened, to the great damage of the said intervenors, Payne & Harrison, as by their complaint appears—

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this nineteenth of February, in the year of our Lord one thousand eight hundred and fifty-six.

J. W. GURLEY,
Clerk of the United States Circuit Court
for Eastern District of Louisiana.

THE UNITED STATES OF AMERICA.

The President of the United States, to Jonathan J. Niles, James M. Niles, Leander H. Corey, and Stephen Allen, partners, transacting business under the name and style of Niles & Co., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the Udited States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein Jacob U. Payne, J. P. Harrison, and George W. Huntington, commercial partners, doing business under the firm name of Payne & Harrison, are plaintiffs in error, and you et al. defendants in error, to show cause, if any there be, why the judgment should not be rendered against the said plaintiff in error, as in said writ of error

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mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this nineteenth day of February, in the year of our Lord one thousand eight hundred and fifty-six.

THEO. H. McCALEB,
U. S. Judge.

[Endorsed:] United States Circuit Court, No. 2,424, Payne & Harrison, intervenors, &c., vs. Niles & Co., and W. A. Broadwell, syndic of Andrew Knox, dec'd. Citation in error.

Marshal's return.

Rec'd Feb. 19th, 1856. And on the 21 Feb'y, 1856, I served the within on Niles & Co., by delivering a copy thereof personally to Stephen Allen, one of the partners of said firm of Niles & Co., in the city of New Orleans. Ret'd Feb'y 25, 1856.

H. DUFELHO,
D'y Marshal.

THE UNITED STATES OF AMERICA.

The President of the United States, to William A. Broadwell, syndic of Andrew Knox, deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein Jacob U. Payne, J. P. Harrison, and George W. Huntington, commercial partners, doing business under the firm name of Payne & Harrison, are plaintiffs in error, and you and al. are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this nineteenth day of February, in the year of our Lord one thousand eight hundred and fifty-six.

THEO. H. McCALEB,
U. S. Judge.